MALAYSIAN REPORTS

Canopee Investment Pte Ltd & Ors v Landmarks Holdings Bhd & Ors

HIGH COURT (KUALA LUMPUR) – CIVIL SUIT NO D2-22-79 OF 1987
SHANKAR J
27 MAY 1987

Civil Procedure – Interim injunction granted restraining holding of company meeting – Whether injunction should be extended – Whether hearing in chambers or open court – Damages an adequate remedy – Injunction set aside

Companies and Corporations – Pledge of company shares to defendants as security for loan – Default in repayment – Defendants made requisitions requiring company to convene an extraordinary general meeting for removal of company directors – Ex parte injunction granted restraining holding of meeting – Whether injunction should be extended – Allegation of fraud and mala fides – Companies Act 1965

The plaintiffs had obtained loans from various foreign banks and, as security for the loans, had deposited, by themselves or by third parties, an aggregate of 41,133,875 shares with Landmarks, in the first defendant company. The plaintiffs were in default of the loan agreement and liabilities had arisen thereunder. The defendant banks had then caused the shares to be registered in their or their nominees' names and thereafter requisitioned for an extraordinary general meeting of the first defendant company to remove certain directors. The plaintiffs moved for and obtained, ex parte, an interim injunction restraining the holding of the meeting.

The present hearing is for an application of extension of the injunction. Among the grounds advanced for the injunction were that the plaintiffs were then preparing for a scheme of reconstruction to which the defendant banks were privy, and that the defendant banks had attempted to obtain certain confidential information and, having failed, had then requisitioned the extraordinary general meeting which showed that there was an ulterior motive on their part in so requisitioning.

Held, dismisssing the application with costs:

(1) As the defendant banks commanded only 18% of the share capital of Landmarks, if the resolution proposed for the extraordinary general meeting was not in Landmarks' interest, there was every reasonable expectation that the defendant banks would fail in their attempt.

(2) The damage that the plaintiffs were complaining of was monetary and therefore, damages were not only an adequate remedy but the only remedy. As the defendants are able to satisfy any claim the plaintiffs can prove against them at trial, therefore the learned judge was not disposed to continue the ex parte injunction he had granted earlier.

(3) In view of the fact that the grant of the relief sought would have disposed of the whole action, the court would apply the tests propounded in *Cayne & Anor* v *Global National Resources*[1] and *NWL Ltd* v *Woods*[2] and dismiss the application.

(4) There was no evidence whatsoever with regard to the allegations that there was a 'fraud' on the defendants' statutory power to requisition an extraordinary general meeting. As the evidence did not show any fraud or oblique motive, the right to requisition was exercised bona fide. The pledgee is entitled to do everything he reasonably can to realize his security. As the pledgees here have a right to sell, the buyer would have acquired all the rights of a registered shareholder. The express right to call for the extraordinary general meeting and to vote thereat need not be looked for in the pledge documents. They are conferred by the Companies Act and the memorandum and articles of association of the company.

Cases referred to

1 *Cayne & Anor* v *Global National Resources* [1984] 1 All ER 225 (refd)
2 *NWL Ltd* v *Woods* [1979] 3 All ER 614 (refd)
3 *Humes Ltd* v *Unit APA Ltd & Anor* [1987] 5 ACLC 15 (follD)
4 *Dominion Mining NL* v *Hill & Anor* [1971] 2 NSWLR 259 (refd)
5 *South Norseman Gold Mines NL* v *MacDonald* [1937] SASL 53 (refd)
6 *Isle of Wight Railway Company* v *Tahourdin* (1883) 25 Ch D 320 (refd)

Legislation referred to

Companies Act 1965 s 144
Courts of Judicature Act 1964 (1972 Rev) ss 15, 16(e)
Rules of the High Court 1980 O 32 r 11 (1), (2), O 60 r 4

WSW Davidson, Wong Weng Kwai and *Kenny Yap* for the plaintiffs.

Cecil Abraham for the second, third, fourth, sixth, fourteenth and sixteenth defendants.

KS Wong for the first defendant.

Robert Lazar for all the defendants except the eighth, tenth and twelfth defendants.

Wang Kuo Shing for both defendants.

Cur Adv Vult

Shankar J: Landmarks Holdings Berhad ('Landmarks') is a company whose shares are listed for quotation on the Stock Exchange of Kuala Lumpur and Singapore. Its total issued share capital is $115,596,250 represented by 236,192,500 shares of 50 cents each. The plaintiffs between them pledged 41,133,875 shares in Landmarks as security loans obtained from some of the defendants ('the lenders') to this application.

These loans were documented in a series of loan and pledge agreements ('the pledge agreements'). Pursuant to the powers contained in them the lenders caused the shares to be registered in their own name or in the names of the other defendants named in these proceedings. The loans had to be repaid in the manner provided by the pledge agreements. They were not. So the lenders in their capacity as registered shareholders of Landmarks delivered requisitions to the registered office of Landmarks on 31 March 1987 requiring the company to convene an extraordinary general meeting ('EGM') of Landmarks not later than two months thereafter, ie 31 May 1987. The object of the EGM was to pass a resolution for the removal of the second, fourth and ninth plaintiffs and one Chong Wai Hiong as directors of Landmarks.

On 17 April 1987 I made an ex parte injunction in chambers that the defendants be restrained from pro-

ceeding with these notices. The effect of the injunction was to prevent the EGM being held. Voluminous affidavits had been filed in support of the application. Counsel for the defendants who were present intimated that contentious reply affidavits were on the way. This was a complex matter which the parties indicated they would need two days to argue. I therefore fixed it for disposal on 4 and 5 May 1987 and adjourned the matter into open court.

Being a public company of some size, this matter had not escaped the attention of the press. The reporters applied to the registry for access to the court file. They were told that pursuant to O 60 r 4 of the Rules of the High Court 1980 they were only entitled to the copies of the writ and a copy of the order made. Any other document could only be supplied with leave but no application was made in that regard.

On 4 May 1987 when the matter was called upon for disposal in open court, Mr Wong Kuo Shing, counsel for Landmarks, made an oral application for this matter to be adjourned from open court back into chambers. No advance notice of this application had been given and there was no affidavit in support. The grounds urged were that publication of the proceedings would have a depressing effect on the prices of Landmark shares in the open market, and that this was prejudicial to the best interests of the company. It was also suggested that other creditors would be needlessly stimulated into forcing Landmarks to settle their claims earlier than should be the case. Mr Davidson, counsel for the plaintiffs, supported the application. Robert Lazar, counsel for the defendants, did not have strong views, one way or other.

I was given very little by way of supporting authority for this application. The point was one of obvious public importance. After a short adjournment to think it over, I rejected the application. I said I would give my reasons later and I do so now.

The applicable rule is O 32 r 11(1) and (2) of the Rules of the High Court 1980 which reads:

> 11(1) The judge in chambers may direct that any summons, application or appeal shall be heard in court or shall be adjourned into court to be so heard if he considers that by reason of its importance or for any other reason it should be so heard.
>
> (2) Any matter heard in court by virtue of a direction under paragraph (1) may be adjourned from court into chambers.

Mr Wong, counsel for Landmarks, was contending that it was very important both for Landmarks and its directors that this case should not be publicized, for the reasons already stated. But what are the criteria?

The starting point is s 15 of the Courts of Judicature Act 1964 (1972 Rev) which reads:

> 15(1) The place in which any court is held for the purpose of trying any cause or matter, civil or criminal, shall be deemed an open and public court to which the public generally may have access:
>
> Provided that the court shall have power to hear any cause or matter or any part thereof in camera if the court is satisfied that it is expedient in the interests of justice, public safety, public security or propriety, or for other sufficient reason so to do.
>
> (2) A court may at any time order that no person shall publish the name, address or photograph of any witness in any cause or matter or any part thereof tried or held or to be tried or held before it, or any evidence or any other thing likely to lead to the identification of any such witness; and any person who acts in contravention of any such order shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding three years or to both.

Since the fundamental rule is that the court should be open and to which the public may have access, it must follow that the exclusion of the public from hearings in chambers is a departure from the established practice. The position in England is the same. 10 *Halsbury's Laws of England* (4th Ed) para 705 says, 'Mere sensitivity to publicity or even the mere interests of decency is not enough to exclude publicity.' Only when a statute or the rules of court specifically provide that a matter may be disposed of in chambers can it be dealt with that way: See 37 *Halsbury's Laws of England* (4th Ed) para 354. Section 16(e) of the Courts of Judicature Act 1964 provides that rules of court may be made to prescribe what business is to be transacted in court and what business in chambers.

Without the benefit of submissions on this aspect of the matter, and merely drawing upon my knowledge of the general practice of these courts, it seems to me that solicitors have an option to steer an interlocutory matter into chambers or open court by merely choosing whether they will take out a summons-in-chambers or a motion in open court. The considerations which may guide them are the greater speed with which an appointment could be obtained in chambers, the complexity of the matter, and of course an eye to costs. Hearings in open court attract a getting-up fee. But this case has brought out another factor. Publicity can be stifled by keeping a matter in chambers. This is probably why O 32 r 11 is open-ended. It enables the court to decide what is to be done in the interests of justice in each case.

As to Landmarks, I was acutely conscious that this is a public company. A substantial majority of the shareholders are directly affected by these proceedings and they have a right to accurate information as to what is going on. They must be scattered both in Malaysia and Singapore and probably overseas also, and it cannot be convenient for all of them to come to court.

I also advised myself that from the moment a public company is floated there are stringent requirements in

the Companies Act requiring the fullest information to be provided to all interested parties in order to give them a full and fair view of the company's office-bearers and its operators. See *Pennington on Company Law* (4th Ed) pp 510-514 under the heading 'Publicity on reports of directors.'

The court is not dealing here with a private domestic squabble. It is a battle for commercial survival by a group of companies substantially owned by the family of the second, fourth, and ninth plaintiffs. This same family were substantial shareholders and in de facto control of Landmarks.

So the importance of its subject matter alone made it a fit matter to be heard in open court. Other reasons pointing to the same conclusion will appear later in this judgment, apart from the complexity of the matter and the length of time it would have taken to argue.

I now move on to the crux of the plaintiffs' application, which raised a point of law which counsel say has not yet been decided in any reported case in Malaysia or abroad. It concerns the extent of the right of a pledgee of shares in a limited company to embroil himself in the affairs of that company whilst the loan is still unpaid. Untrammelled, the exercise of such a right can have a critical effect of the control of the pledgor over the affairs of the company. It may also have a devastating impact on the credibility of the pledgor and consequently on the value of his security.

Nine pledge agreements have been exhibited in the material before me. They are not in standard form. And they provide for the laws of various countries to apply. But they are all in the English language. I have had no trouble in understanding them.

The pledge agreements gave the lenders a right to have themselves or their nominees registered as shareholders in the share register of Landmarks. This would have involved the issue of share scrip in the names of the lenders, and/or their nominees. So the directors of Landmarks must have had actual knowledge of the registration as and when it took place.

But the plaintiffs complain that they did not identify these registrations with each of the defendant lenders until very recently, presumably until after it became apparent that the lenders were acting in concert. It is asserted that each time a lender registers shares pledged in the name of a nominee he should give notice to the company. In the present case such notice was only given by the defendant registered shareholders through their solicitors on 27 March 1987 with the requisitions. Our problems had their genesis well before that.

The family of the ninth plaintiff and some 100 companies they control (hereafter called 'the CKL group') borrowed extensively from various national and international sources. The CKL group is principally involved in property development and investment in shares and properties. These properties and shares were used to secure the loans. The market value of this collateral dropped drastically over the last two years. Recession or a downturn in the Malaysian economy is blamed for the inability of the CKL group to service its borrowings. The pigeons turned predatory and came home to roost. Many of the lenders requested additional collateral, some disposed of large blocks of the shares held, and others took legal action to recover their loans.

This court is not immediately concerned with the global problems of the CKL group. The issue here is a narrower one. It is whether I should permanently prevent the lenders from causing to be convened the extraordinary general meeting for the removal of the directors of Landmarks who are now under fire.

Commencing from October 1986 representatives of the CKL group held meetings with representatives of the defendant lenders. These lenders do not constitute the totality of all the lenders of the CKL group. They are a class apart for the purposes of the present exercise in that they all hold Landmarks shares as collateral for the loans which they made.

During these meetings it was suggested that what was required as a start was a detailed study of the financial problems of the CKL group to determine financial viability and to look into measures required for a rescue package ('the scheme'). The DG-Bank-GZB (Asia) Ltd, a merchant bank in Singapore, and Arthur Young and Co, an international accounting firm, were engaged by the CKL group to prepare the scheme.

Simon Chong ('Simon'), the second plaintiff, is the person in charge of the day-to-day administration of Landmarks. In January 1987 he discussed mutual problems with representatives of the second and third defendants including the vice-president of American Express Bank Ltd, a Mr CF Keenan ('Keenan'). Finalization of the scheme was expected by end March 1987.

It became available, however, on 23 March 1978 and was distributed immediately. On 27 March 1987 Simon and his colleagues met Keenan and other lenders' representatives in Singapore.

Simon says that Keenan disclosed at this meeting that they had identified a buyer for approximately 23% of Landmarks issued share capital. The lenders then held approximately 18% of that capital and had access to another block of about 5%. The intended sale price was 95 cents per share. But the intended buyer wanted detailed information relating to the company and offered to arrange a private meeting between Simon and this purchaser.

Coincidentally, Keenan also handed Simon copies of a series of requisitions calling for the EGM to remove Simon, his two brothers, and the ninth plaintiff as directors.

Simon says the object of this action was to pressurise him and his colleagues to divulge confidential information to the buyer so as to assist in the sale of the pledged shares. He claims that the requisition notices were therefore a fraud on the power to requisition the EGM, which is a statutory right conferred by s 144 of the Companies Act 1965 on registered shareholders who together hold more than 10% of the issued share capital of a company.

Keenan disputes this. He says that the idea of requisitioning a meeting had been internally mooted as early as January 1987 but the actual implementation was delayed pending receipt of the scheme. When this arrived the lenders thought it offered no realistic solutions and decided to proceed to attempt to cure the management deficiencies in Landmarks by themselves. The lenders thought it in the best interests of both themselves and Landmarks that the relevant directors be removed.

Simon does not say what confidential information was being asked. Keenan does say in his affidavit that the lenders did not want to see the figures (of Landmarks) but that Simon should do what he legally could to provide the information to the prospective purchasers. He is supported in this by Mr Robinson, the chief manager of the second defendant.

Simon suggests that the defendant lenders in some way encouraged the plaintiffs to produce the scheme in a manner which led to a reasonable inference that they would commit themselves to the proposals, thereby creating some kind of an equitable estoppel so as to give the CKL group a fighting chance to implement the rescue package. Keenan's response, if I may summarize it thus, was that he never said he was going 'to buy a pig in a poke.' He was not prepared to commit himself to a document he had not seen, and when the scheme did arrive he and the other lenders had serious reservations about many of the proposals.

Another point raised is that the resolution proposed by the requisitionists does not stipulate alternative appointments to those to be removed. If carried it is alleged that there would thus be a gap in the leadership of the company. The lenders say that as expatriate entities they were reluctant to put themselves in the saddle but preferred to invite other substantial shareholders like the Employees Provident Fund Board, Malaysia National Insurance Berhad, Peremba Berhad and the Co-operative Central Bank to suggest alternatives.

It is also suggested that the proposed resolutions would be an exercise in futility because an AGM is due to be held by the end of June 1987.

The lenders' conduct is also said to constitute interference against the plaintiffs' equity of redemption.

I think it desirable to emphasize at this juncture that it has been conceded by counsel for the plaintiffs that all the borrowers are in default of the pledge agreements. They have been called upon to repay and they cannot. This is not a case where the lenders are seeking to call an EGM before the liabilities under the pledged documents have fallen due. In other words, in every case the right of the lenders to sell the shares on the open market had already crystallized.

The general principles which guide a court when granting an injunction are set out in 24 *Halsbury's Laws of England* (4th Ed) paras 916 to 966 and in the case of mortgagees at para 1011. Amongst the many factors which the court takes into consideration are the availability of alternative remedies.

Here was a case where the lenders only commanded about 18% of the votes in Landmarks. Eighty two percent of the shares of the company were in other hands with the CKL group holding a controlling interest. So if the resolution proposed for the EGM was not in the company's interests there was every reasonable expectation that the lenders would suffer a sharp rebuff. The tail does not wag the dog. Besides, the defendants were all massive financial institutions. The damage the plaintiffs were complaining of was monetary. Damages is thus not only an adequate remedy; it is the only remedy. The defendants' pockets are deep enough to satisfy any claim the plaintiffs can prove against them at the trial. On these two grounds alone I was not disposed to continue the ex parte injunction I had granted earlier. I would now go further to state why I found the submissions made for the plaintifs devoid of merit.

This was a case where the grant of the relief sought would have disposed of the whole action. There was only a general indorsement on the writ. The evidence was by way of affidavit evidence. *Cayne & Anor* v *Global National Resources*,[1] applying *NWL Ltd* v *Woods*,[2] says everything this court needs to know in such cases.

With respect to the plaintiffs, the 'fraud' on the power which they allege against the lenders did not even begin to get off the ground. It is a serious thing to impute to a person that he was demanding with menaces information that he was not legally entitled to in order to obtain some material gain. The word is blackmail. If it did exist, it would have been a simple matter for the plaintiffs to have reported it to the relevant authorities in Singapore because that is where the threat is supposed to have been made.

But I found no evidence whatsoever before me from which I could even remotely come to a conclusion even on a balance of probabilities that any such threat had

been made. Mr Davidson of counsel conceded that at its highest Simon's allegation was no more than an innuendo. To be acted upon, a sinister inference must be the only inference from the established facts. Here, there was an overwhelming mass of material that the defendants were acting legitimately in their attempts to recover their money. In short, the evidence did not disclose any fraud or oblique motives whatsoever. *Humes Ltd* v *United APA Ltd & Anor*[3] is a case which is in many respects similar to ours. The argument that the right to requisition must be exercised bona fide was taken but the court held as I have done that mala fides had not been demonstrated.

The next point I must decide is the alleged inability of the defendants to call for the meeting because the pledge agreements which did specifically grant voting rights, did not add up to more than 10% of the share capital of the company. It was argued that unless the document specifically conferred this right, the pledgees could not exercise it.

With respect to counsel, there is no need for me to analyse here, in extenso, the wording of each of the pledge agreements. That may have been necessary if the liabilities under the pledge agreements had not fallen due. In such a case the absence of a power to so act may have been critical, but I do not have to decide that here. In the present case the liabilities had not only fallen due, but were grievously in arrears.

In such a case, it is the opinion of this court that the pledgee is entitled to do everything he reasonably can to realize his security. Share markets are notoriously volatile, and scrip in public companies is almost on a par with currency and fluctuates in value literally from minute to minute. If pledgees have a right to sell, as in this case they had, the buyer would have acquired all the rights of a registered shareholder. That can only be so if the vendor has those rights vested in himself. The express right to call for the EGM in this case and to vote threat need not be looked for in the pledge documents. They are conferred by the Companies Act and the memorandum and articles of association of the company.

Lenders can aggregate their votes in a case such as this to requisition a meeting: See *Dominion Mining NL* v *Hull & Anor*.[4] Once shareholders having the necessary voting power and number of shares have lodged the requisition, the sole condition for bringing into existence the duty of the directors to call the meeting is fulfilled, and the subsequent withdrawal of some of the requisitionists does not affect the rights of the others. See *South Norseman Gold Mines NL* v *MacDonald*.[5] In this case therefore, I do not think the non-participation of the thirteenth and fourteenth defendants in this action affects the portion.

As to the complaint that the resolution if carried would leave a gap in the board because no alternatives have been suggested, the point was taken and failed in the *Isle of Wight Railway Company* v *Tahourdin*.[6] The general meeting can always fill up vacancies in the board if all the directors are removed. This is not a ground for directors, who are threatened with removal, abstaining from carrying out their duty to call an EGM which has been properly requisitioned.

In the present case I am unable to understand the plaintiffs' reference to interference with their equity of redemption. As long as the shares are not sold and still remain in the hands of the lenders, the plaintiffs can redeem by paying off the loan and proper charges. If they cannot do so, they should not be heard to complain if the lenders exercise their legitimate rights which have arisen by reason of the default of the plaintiffs. The situation may have been otherwise if the lenders were seeking to exercise their rights before the liabilities fell due but that is not the case here.

Finally I must deal with the estoppel point. The contention is that the plaintiffs were encouraged to spend money on the scheme by the lenders and consequently the latter are obliged to stay their hand and allow the scheme to be implemented. But the evidence before me does not warrant a finding that the lenders made a representation of fact to the plaintiffs that if the latter put up a scheme the lenders will unconditionally agree to its implementation. Apart from all the other reasons why this conclusion is totally unjustified, is the rather obvious one that at the time the scheme was mooted nobody knew what it was going to contain. When it arrived it was hedged with so many ifs and buts that at best I can only say this was an invitation to treat. Therefore the estoppel point also fails.

Before I conclude there are two observations I would make. Mr Davidson and Mr Wong Weng Kwai of counsel here both made a valiant effort on behalf of the plaintiffs by saying everything that could be urged in supporting this application. Meaning no disrespect to plaintiffs' counsel, I was left with the feeling as the case proceeded that they were being expected to make bricks without straw. I could see no intrinsic merit in the application and did not feel the need to call upon Mr Lazar of counsel for the defendants to reply. The extensive legal researches by both parties was of great assistance to me and I would place upon record my debt to them.

Earlier in my judgment I said I would give some further reasons why I felt this case should be heard in open court. At p 4 of the scheme the following passages appear:

Exposure

If the scheme proposed is rejected and no alternative scheme can be agreed upon, it is likely that lenders to the CKL

group will take their own actions to recover the debts. As the CKL group is unable to service the debts or repay the principal this will result in immediate liquidation/bankruptcy of the whole CKL group.

In total, at least 100 companies are involved and the following adverse impact on the economies of Malaysia and Singapore may take place:

(a) Stock Exchange:
The listed companies within the CKL group may be suspended. Listed companies controlled by the Chongs' business partners and others may also be affected, probably causing panic-selling by the investor public. The situation could well deteriorate and affect both the stock exchanges in Malaysia and Singapore.

(b) Banking system/economy:
Properties held as securities may have to be sold off at forced sale values while quoted shares held cannot be disposed off due to the suspensions. Large losses could therefore accrue to the lenders and cause adverse publicity to the banking system and the Malaysian and Singapore economies.

(c) Stock brokers:
When quoted shares held as collateral cannot be disposed of through the stock exchanges, the brokers will encounter liquidity problems, and some brokers may face liquidation particularly those which are more involved with the CKL group. Again, the adverse publicity may hurt the economies on both sides of the causeway.

Not everybody who quotes the maxim 'fiat justitia' (let justice be done) is aware that it is only half the quotation. The other half is 'ruat coelum' (though the heavens may fall). If the skies are to open over the Malaysian public as a result of the activities of participants in the judicial process, then the sooner the public gets to hear about it the better. Emphatically this case was one of which it was in the public interest to have heard in the open.

Mercifully the doomsday predictions for the Landmarks shares do not appear to have materialised so far. They have, as counsel for Landmarks readily concedes, gone up in price since the dismissal of the application. Why that should be so, is of course another story.

It only remains to order that the plaintiffs will pay the defendants the costs of today's proceedings also.

Order accordingly.

Solicitors: *Azman, Davidson & Co; Shearn Delamore & Co; Wang Kuo Shing & Co.*

Reported by *Wong Kim Fatt*

Standard Chartered Bank v Konwah Enterprise Sdn Bhd & Ors

HIGH COURT (KUALA LUMPUR) – CIVIL SUIT NO D3-23-1294-87
MOKHTAR SIDIN JC
12 MAY 1989

Banking – Overdraft facilities – First legal charge on land – Guarantee – Land sold by chargors with consent of chargee – Proceeds of sale paid to account of borrowers – Fair market value of land – Whether chargors agents of bank – Duty of care of chargee

Civil Procedure – Summary judgment – Appeal against decision of registrar – Whether any triable issue

The plaintiff as banker had extended to the first defendant overdraft banking facilities secured by a first legal charge created over a piece of land belonging to the second and third defendants and guaranteed by the second to seventh defendants up to the limit of $400,000. The plaintiff demanded payment when the overdraft facilities advanced stood at about $360,000. The second and third defendants, as chargors, with the consent of the plaintiff, sold the land by private treaty at the sum of $280,000 which was paid to the plaintiff to reduce the overdraft account of the first defendant. The plaintiff's claim against the first defendant was accordingly amended and reduced by $280,000. The learned senior assistant registrar gave summary judgment for the plaintiff for the amended sum.

Being dissatisfied with that decision, the second, third, fourth, fifth and sixth defendants appealed to the judge in chambers. On the hearing of the appeal, it was contended on behalf of the defendants that the decision of the senior assistant registrar was wrong and should be set aside and the appeal allowed on the following grounds: (a) the amount claimed and stated to be owing by the defendants to the plaintiff had not been proved at all either by the affidavit filed or by any certificate of indebtedness; and (b) it was the contention of the fourth, fifth and sixth defendants that the plaintiff had failed to discharge the duty of care which it owed to them, ie the fourth, fifth and sixth defendants, to obtain the true market value of the land at the time when the plaintiff had agreed to the sale of the land by the chargors, ie the second and third defendants.

Held, dismissing the appeal with costs:

(1) The learned judicial commissioner is of the opinion that the sale of the land at $280,000 reflects the fair, or substantially the fair, market value of the land at the material time. The sale was done by the second and third defendants who are the owners and chargors. It was the second and third defendants who negotiated with the third party for the sale and purchase of the land by private treaty, as opposed to a sale by public auction under the provisions of ss 253 to 269 of the National Land Code 1965. The *Standard Chartered Bank* case[1] does not assist the defendants. The second and third defendants are not the agents of the plaintiff, which is not responsible for their act.

(2) The amount due and payable at the time of the hearing of the O 14 application before the senior assistant registrar was as stated in the affidavit of Lim Jian Hoo affirmed on 14 July 1987. The defendants failed to adduce any evidence to show that the amount stated is wrong in order to raise a triable issue. The learned judicial commissioner is satisfied that the land was sold at $280,000 and this sum had been taken into account by the plaintiff.